* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on : February 1, 2007.
% Date of Decision : February 20, 2007.

\+ FAO No. 93/2002

\# SHEO NATH SINGH ..... Appellant
! Through Mr. Chandra Shekhar with
Mr. Sanjay Kumar Tyagi, Advocate

versus

$ SUJATA ..... Respondent
^ Through Mr. Vinay M.Sharma, Advocate

CORAM :-
HON'BLE DR. JUSTICE S. MURALIDHAR

1. Whether Reporters of local papers may be allowed to see the judgment? Yes
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in Digest? Yes

:Dr. S. Muralidhar, J.

1. This appeal is directed against the judgment/order dated 6.2.2002 passed by the learned Additional District Judge, Delhi in HMA. No.383 of 1999 by which the Appellant's petition seeking dissolution of his marriage with the Respondent on the ground of cruelty and desertion, was dismissed.

2. The Appellant and Respondent were married on 31.10.1995 and resided in Delhi upto 4.6.1996. The Appellant is an employee of the Central Government and the wife was employed as a Nursing Officer in an Army hospital.

3. The husband cited as many as 8 instances in support of his case that the Respondent has treated him cruelly during the time they stayed together. The Appellant, however, examined only himself as the sole witnesss. In his cross-examination, the Appellant admitted that the parties had shifted their residence from Pushpa Vihar, where

they were residing soon after the marriage, to the Government accommodation allotted to the Respondent at Lawrence Road in February, 1996. It was his case that the Respondent had agreed that she would leave her job after marriage, but later refused to do so, that the Respondent had not allowed the sister of the Appellant to stay with them and that he was forced to leave the matrimonial home because of the misbehaviour of the Respondent. In the cross-examination, it transpired that the only contribution that the Appellant made to the matrimonial home was a rented accommodation at Dakshinpuri, where the parties did not reside even for a single day. Therefore, it was the Respondent who made the arrangement for residing at Pushpa Vihar and later when they resided together at Lawrence Road, it was on account of her employment that the said premises were available for their residence. He also admitted that the Respondent's parents, brother and sister had in fact come to stay later on in the matrimonial home. In particular, he admitted that his sister had stayed at the Lawrence Road for a few days.

4. In addition to the above allegations, Appellant contended that by making a false accusation in the written statement of an extramarital affair of the appellant with another person, the Respondent had compounded the cruelty meted out to the Appellant.

5. The precise statement in the written statement, objected to by the Appellant reads as under:

> “It is submitted that the brother-in-law of the Petitioner was living at Dakshinpuri which is very near to Pushp Vihar and the said brother in law of the Petitioner used to meet the parties quite often

after the morning walk and on all such occasions, the Respondent has treated the brother in law of the Petitioner with hospitality and she used to prepare tea, breakfast etc. for him. But, it was strange that the Petitioner himself used to avoid the Respondent meeting his friends and relatives. It later revealed that the Petitioner did not have clean background and he did so out of the fear that his relatives and friends who know about his background and the past may not reveal the same to the Respondent. It is only in the first week of March, 1996, it revealed that the Petitioner has kept a woman, named, Meera at Calcutta. The said Lady was the sister of the son in law of the Petitioner's maternal uncle. At this occasion, the Petitioner proudly told the Respondent that he would keep the said woman as she loves him and even tried to commit suicide after knowing about the marriage between the parties. He further shamelessly informed the Respondent in the presence of his sister and maternal aunt that he has married the Respondent as his parents did not approve of the Petitioner keeping the said woman Meera which he did stealthily without informing his family and further that his parents wanted him to get rid of the said woman, therefore, they pressurised him to marry the Respondent. The Respondent had the shock of his life when the Petitioner told him that he did not intend to have any child from the Respondent as he is already fathering the child from the said woman."

6. When the Respondent examined herself as a witness, she gave details of the cruel treatment suffered by her at the hands of the appellant. According to her, the appellant had physically abused her in the first few days which resulted in dislocation of her shoulder. However, she did not report it to the police as she hoped that the

relations would improve. She further stated that the Appellant would pick up a quarrel on trivial matters and stay away from the respondent.

7. The Trial Court upon an examination of the evidence and the pleadings came to the conclusion that the Appellant had not been able to establish the ground of cruelty against the Respondent even on a preponderance of probabilities. The Trial Court took into account the fact that the Respondent had filed a criminal case against the Appellant and the in-laws on the ground of cruelty under Serction 498-A of IPC and that the Appellant and the family members had been discharged by the learned Metropolitan Magistrate by judgment dated 11.1.1999. The Trial Court accepted the version of the Respondent that she had been subjected to cruel behaviour by the Appellant. On the question of the alleged false averment in the written statement about his having an extramarital relationship with the person named `Meera', the Trial Court returned the following findings:

> “Civil litigation is always based on preponderance of probabilities. I am inclined to accept the testimony of the respondent as her version appears to be more honest and truthful. From the evidence on record it is borne out that the parties were not enjoying good relations and it was primarily because of the indifferent attitude of the petitioner. He did not want to keep the matrimonial ties with the respondent as he was interested in some other person namely Meera. There appears to be little explanation for his behaviour otherwise. PW1 could not explain to the court in his version on oath in the court as to what was the wrong attitude of the respondent; his contention that the main dispute between both the parties was because the respondent had refused to leave her job finds little

force; a permanent commissioned army officer who was admittedly working at the time when the parties got married and the petitioner again giving contrary version as to who had agreed on behalf of the respondent to leave the job; whether it was her parents or whether it was respondent herself having remained unanswered, this version of the petitioner is false. It is clear that the petitioner wanted to bring the matrimonial ties to an end for some other reason. In these circumstances it cannot be said that the contention of the respondent that the petitioner was probably interested in Meera amount to cruelty to the petitioner."

8. Ultimately the Trial Court came to the following conclusion :

"In the instant case no details having been spelt out about the nature of the cruelties meted out by the respondent to the petitioner and keeping in view the provisions of Section 23(1) of the Act which postulates that no party should be allowed to take advantage of his own wrong, in my view the evidence of the petitioner does not establish his case for cruelty. Ordinary wear and tear of family life cannot be termed as cruelty entitling the party for relief under section 13(1)(ia) of the Hindu Marriage Act.

61. On the other hand it is the respondent who has suffered at the callous hands of the petitioner; not only is this a case of physical abuse but the petitioner not maintaining sexual contacts with the respondent, not agreeing to have a child from the respondent, nor making any efforts to set up the matrimonial home clearly make out a case of cruelty by the petitioner to the respondent."

9. On the second ground of desertion, the Trial Court, on the facts of the case, found that the Appellant had failed to establish that it was the Respondent who had the intention of deserting the matrimonial home. It was found that the Appellant had made no efforts to bring back the Respondent. On the contrary, the version of the Respondent that she had made several efforts to dialogue with the Appellant in order to resume the matrimonial relationship had been corroborated by the witnesses produced by her. Therefore, on the ground of desertion, the Trial Court found that the Appellant had failed to establish the case against the Respondent.

10. The learned counsel for the Appellant has, while reiterating grounds on which the Appellant seeks divorce, laid emphasis on the fact that the Trial Court had failed to return any categorical findings on the contention of the Appellant herein that the cruelty had been compounded by the false allegation made by the Respondent in her written statement. Learned counsel, in support of this submission relied upon the judgment of the Hon'ble Supreme Court in ***V. Bhagat v. D. Bhagat*** AIR 1994 SC 710 and in particular para 22 thereof. Since the principal ground urged by the appellant here concerns the allegation made by the respondent in the written statement, the law in this regard may be briefly noticed. In ***V. Bhagat vs. D. Bhagat***, the Court did not merely rely on averments made in the written statement of the wife, but the fact that she had filed an additional written statement repeating these allegations. Further, questions were put to the husband while he was in the witness box to suggest that “the petitioner has lost his normal mental health, that he is a mental patient requiring expert psychological treatment and above all to

brand him and all the members of his family including his grandfather as lunatics". The Court concluded that the wife was "going far beyond the reasonable limits of her defence" and that "these assertions cannot but constitute mental cruelty". In ***Vijay Kumar Bhate vs. Neela Bhate*** (2003) 6 SCC 534 again the allegation of unchastity and indecent familiarity with the person outside wedlock made against the wife, and suggested in the course of examination and cross-examination was held to be of "such quality, magnitude and consequence" as amounting to "the reformulated concept of cruelty in matrimonial law." On the facts of that case it was found that the husband had been persisting with such accusations "for a sufficiently long time".

11. Turning to the case on hand, the relevant portion of the written statement, which according to the Appellant, constitutes a false allegation has been already extracted hereinabove. A reading of the said extract reveals that according to the Respondent, her source for this information was the Appellant himself. This portion of the written statement occurs in a paragraph where the Respondent has narrated all other instances of cruel treatment of her by the Appellant. Since the written statement was already available to the appellant during the trial it should not have been difficult for the Appellant to cross-examine the Respondent on this aspect of the matter.

12. In para 50 of the Trial Court's judgment, it is noticed that the Appellant was cross-examined on this aspect and he denied having any affair with the person named Meera or that on account of his parents not agreeing to his marriage with the said person, Meera, he had been forced to marry the Respondent. The Respondent was

examined as a witness and if it was the case of the Appellant that her allegation in the written statement constituted yet another instance of cruel treatment of him by the Respondent, there is no reason why she should not have been cross-examined by him to test the veracity of her statements on this aspect. Counsel for the Appellant very fairly stated that there was no cross-examination of the Respondent on this aspect by the Appellant. Therefore, the stage of testing the veracity or otherwise of these statements made in the written statement having been crossed, and the Appellant having failed to establish cruelty on that basis, the Appellant cannot now be heard to contend that those statements would nevertheless constitute cruelty.

13. On the facts of the present case, it cannot be said that the allegations in the written statement of the respondent would constitute cruelty by the Respondent of the Appellant warranting the dissolution of the marriage.

14. On the other instances of cruelty, the Appellant has not been able to show that the findings returned by the Trial Court based on the pleadings and the evidence in the present case suffer from any infirmity warranting interference by this Court. A reference may usefully be made to the observations of Hon'ble Supreme Court in ***Shobha Rani vs. Madhukar Reddi*** (1988) 1 SCC 105 where the court observed in para 5 as under:

> "…when a spouse makes complaint about the treatment of cruelty by the partner in life or relations, the Court should not search for standard in life. A set of facts stigmatised as cruelty in one case may not be so in another case. The cruelty alleged may largely depend upon the type of life the parties are accustomed to or their economic and social conditions. It may also depend upon their culture

> and human values to which they attach importance. We, the Judges and lawyers, therefore, should not import our own notions of life. We may not go in parallel with them. There may be a generation gap between us and the parties. It would be better if we keep aside our customs and manners. It would be also better if we less depend upon precedents."

Here one of the grounds urged in support of the ground of cruelty was that the wife had filed a criminal case which ultimately ended in the acquittal of the petitioner and his family members. However as observed in ***Gajjala Shankar vs. Anuradha*** AIR 2006 A.P. 65 this cannot itself constitute cruelty unless coupled with other instances. The facts of the other cases cited by the petitioner also turn on their own facts. In ***Naveen Kohli vs. Neelu Kohli*** 2006 (3) Scale 252, the Supreme Court noticed in para 84 of its judgment that the Respondent there had got more than 10 criminal cases registered against the appellant in that case. This was seen along with all other attendant circumstances to draw the conclusion that "the respondent had resolved to live in agony only to make a life miserable hell for the appellant as well."

15. In the present case the criminal case against the appellant and his family members by the respondent no doubt ended in a discharge/acquittal but given the evidence that has come on record it cannot be said that this institution of a criminal case by itself constitutes cruelty. It must also be recalled that the standard of proof in criminal cases being much higher, and the failure of criminal cases that do not end in conviction being attributable to many factors, the conclusion that such criminal case was instituted without basis and with the sole purpose of meting out a cruel treatment to the spouse

ought not to be lightly inferred. On the facts of the present case, and upon examining the evidence, this court agrees with the trial court that the respondent's version of the cruel treatment suffered by her at the hands of the appellant appears believable and probable.

16. No argument was advanced by counsel for the appellant on the other ground of desertion by the respondent. Nevertheless, this court after examining the records agrees with the Trial Court that the appellant has failed to make out a case of desertion by the respondent.

17. Finally, it was urged that since the parties have been living separately for many years, this by itself constituted an irretrievable break-down of marriage and in view of the recent pronouncement by the Hon'ble Supreme Court in ***Naveen Kohli v. Neelu Kohli*** JT 2006 (3) SC 491, this Court should grant a dissolution of marriage. This submission cannot be accepted in the facts and circumstances of the case where far from accepting, even on a preponderance of probabilities that the Respondent had treated him cruelly, it appears that the Appellant was the one who had stayed away from the matrimonial home, making no effort to take back the wife. The Appellant cannot be permitted to take advantage of a situation brought about by the Appellant himself. The observations of the Hon'ble Supreme Court in ***Shyam Sunder Kohli v. Sushma Kohli*** 2004(2) HLR 513 supports this conclusion.

18. For all of the above reasons, there is no merit in this appeal and it is dismissed with costs of Rs. 10,000/- which will be paid by the appellant to the respondent within a period of four weeks.

Sd/-

February 20, 2007 **(S. Muralidhar)**

ak **Judge**